In this lesson, we are going to try to define "hate crime." First, however, I would like you to consider this basic question: How do we define something? Generally, we look for its common properties. We'll begin by trying to define a couple of concepts with which we are all familiar - one physical and one social.

Ask yourself the following question: What makes something a "door"? What characteristics, qualities, or properties are common to all of the objects that we call doors?
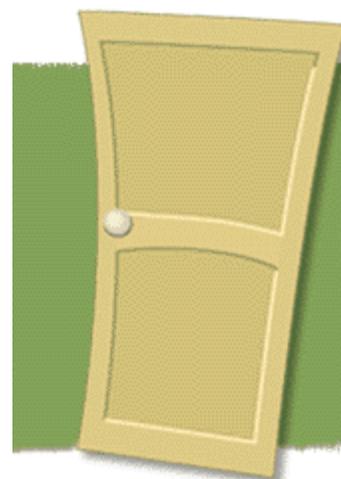
Without consulting a dictionary, share your definition of the word "door" with the other members of your cohort. Discuss how successful you think you have been in creating a definition of the word "door" that includes all possible examples of that object. After you have participated in this discussion, proceed to the next screen.

To participate in the discussion, select OUTLINE from the TOOLS menu. Once you are back at the OUTLINE, select the appropriate FORUM from this lecture.

Webster defines "door" as:

"a moveable, usually solid, barrier
for opening and closing an entranceway,
cupboard, cabinet or the like, commonly
turning on hinges or sliding in grooves"
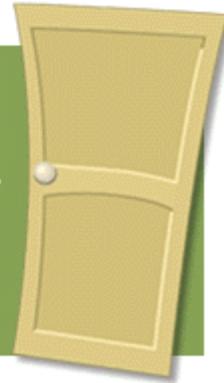
Now, try your hand at defining a word whose meaning is somewhat more elusive: "love."

Again, post your definition to the FORUM. After you have discussed the results with your classmates, proceed to the next screen.

To participate in the discussion, select OUTLINE from the TOOLS menu. Once you are back at the OUTLINE, select the appropriate FORUM from this lecture.

Webster defines "love" as:

"A strong affection for another arising out of kinship or personal ties; attraction based on sexual desire, affection, or tenderness; affection based on admiration, benevolence, or common interests; a person toward whom love is felt; a stong predilection, enthusiasm or liking; the object of such liking or enthusiasm."

Now that you have experienced the comparative difficulty of defining something we are all familiar with, let's try defining something else: "hate crime," the topic of this course. Right up front, we need to know what the "it" is that we're studying.

How can we define a hate crime? What is a hate crime? What constitutes a hate crime? How do we know one when we see one? What (if anything) distinguishes a hate crime from, say, a merely malicious or hateful act?

A wide variety of seemingly unrelated behaviors and conditions may fall under the rubric of hate crimes, so we must establish a criterion – or set of criteria – by which something is or is not deemed a hate crime.

One way to do this is simply to define three key terms, and then call a hate crime anything that falls at their intersection:

- violence = harmful behaviors that lead, or are likely to lead, to physical injury or threat to safety, and/or associated psychological damage;
- hate = ill-will seeking a victim; and
- crime = any behavior that can, if detected, invoke a reaction from the state or sovereign.
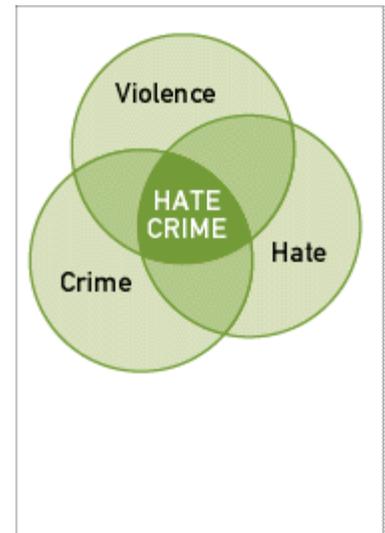
What are the necessary or sufficient elements of hate crime? The first, not surprisingly, is illegality: To call anything any type of crime it, first and foremost, must be illegal. So, in a sense, the law defines what equals a hate crime. Let's take a look at four major federal laws that define the parameters of hate crime in the United States.

First, in 1990, President George H.W. Bush signed into law the Hate Crimes Statistics Act (HCSA), which requires the Attorney General to collect statistical data on hate crime. For the purposes of data collection, this law defined hate crime as "crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, including where appropriate the crimes of murder, non-negligent manslaughter; forcible rape; aggravated assault, simple assault, intimidation; arson; and destruction, damage or vandalism of property" (Public Law 101-275).

Please read the following:

- "Hate Crimes Statistics Act (HCSA)"

GEORGE BUSH
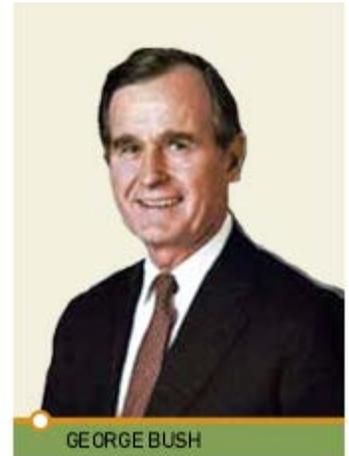
The HCSA is a data collection law. It merely requires the Attorney General to gather and make available to the public data on bias-motivated crime. It does not, in any way, stipulate new penalties for bias-motivated crimes, nor does it provide legal recourse for victims of bias-motivated crime.

The rationale for the HCSA was to provide a legally mandated mechanism through which the empirical data necessary to develop effective policy could be gathered. Those who supported the act argued that involving police in identifying and counting hate crimes could help law enforcement officials measure trends, fashion effective responses, design prevention strategies, and develop sensitivity to the particular needs of victims of hate crimes.

Please read the following:

- A discussion about what the HCSA provides.
- George Bush's remarks reflecting the thinking of those who supported the act.
- Janet Reno's remarks on renewal of the HCSA.
- Hate Crimes Statistics Improvement Act introduced.
- Hate Crimes Statistics Improvement Act .
- Southern Poverty Law Center's comments on hate crimes statistics.
- Hate Crime, Statistics, and Apathy
- The Hate Crimes Statistics Act of 1990: Developing a Method for Measuring the Occurrence of Hate Violence

In 1994, Congress passed two more hate crime laws. First, it passed the Violence Against Women Act (VAWA), which was signed into law by President Clinton as Title IV of the Violent Crime Control and Enforcement Act of 1994 (Public Law 103-322). Title III of the VAWA specifies that "all persons within the United States shall have the right to be free from crimes of violence motivated by gender."

Title III (Civil Rights for Women) creates the first civil rights remedy aimed at crimes of violence motivated by gender. In so doing, it affixed the term hate crime to "a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to animus based on the victim's gender" (Public Law 103-322). (This law has since been ruled unconstitutional.)

BILL CLINTON

Also in 1994, Congress passed the *Hate Crimes Sentencing Enhancement Act (HCSEA).* The HCSEA identifies eight predicate crimes for which judges are allowed to enhance penalties "not less than three offense levels for offenses that finder of fact at trial determines beyond a reasonable doubt are hate crimes" (Public Law 103-322). These crimes are (1) murder, (2) nonnegligent manslaughter, (3) forcible rape, (4) aggravated assault, (5) simple assault, (6) intimidation, (7) arson, and (8) and destruction, damage, or vandalism of property.

For the purposes of this law, hate crime is defined as criminal conduct wherein "the defendant intentionally selected any victim or property as the object of the offense because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person" (Public Law 103-322).

In addition to federal laws, there are many state laws. Advocates in different states share a commitment to using the law as a weapon in the war against racism, nationalism, anti-Semitism, sexism, heterosexism, and so on. However, states have not yet reached consensus on how to best use the law to address bias-motivated violence. As a result, they run the gamut from broad to scant coverage by offering expansive and (comparatively) restrictive definitions of what counts as a bias crime and who counts as a victim of hate (Grattet, Jenness, and Curry 1997; Jenness and Grattet 1993).

Some states, such as California and Iowa, have adopted comprehensive statutes designed to protect the civil rights of a range of constituencies. In contrast, states such as Delaware and Hawaii have adopted more limited legislation by prohibiting only one among many forms of bias-motivated violence (that is, Institutional Vandalism/Desecration or Defacement of Religious Objects or Property), and by legally protecting only select minority groups.

The ADL's Map of State Hate Crimes Statutory Provisions

At present, several types of hate crime legislation are distributed throughout the United States, including:

- Statutes proscribing criminal penalties for civil rights;
- Specific "ethnic intimidation" and "malicious harassment" statutes;
- Provisions for enhanced penalties;
- Statutes requiring authorities to collect data on hate- or bias-motivated crimes;
- Statutes mandating law enforcement training;
- Statutes prohibiting the undertaking of paramilitary training;
- Statutes specifying parental liability; and
- Statutes providing for victim compensation.

Additionally, many states have statutes prohibiting institutional vandalism and the desecration or the defacement of religious objects, the interference or disturbance of religious worship, cross burning, the wearing of hoods or masks, the formation of secret societies, and the distribution of publications and advertisements designed to harass select groups of individuals.

The next three screens show examples of such state statutes.

"No person, whether or not under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or the laws of the United States because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of these characteristics"

(Ca Penal Code 422.7)

"A person is guilty of malicious harassment if her or she maliciously and intentionally commits one of the following acts because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap..."

Oregon's Hate Crime Legislation

Intimidation in the 1st degree: "Intentionally, knowingly or recklessly cause physical injury to another person because of the actors' perception of that person's race, color, religion, national origin, or sexual orientation." (166.165)

Intimidation in the 2 nd degree: "Tampers or interferes with property, with the intent to cause substantial inconvenience to another because of the person's race, color, religion, national origin, or sexual orientation;" "intentionally subjects other persons to alarm by threatening." (166.155)

Reporting of crime statistics: "motivated by prejudice based on the perceived race, color, religion, national origin, sexual orientation, marital satus, political affiliation or beliefs, membership or activity in or on behalf of a labor organization or against a labor organization, physical handicap, age, economic or social status or citizen of the victim." (181.550)

Finally, there are city and county ordinances. For example, St. Paul, Minnesota's "Bias Motivated Crime Ordinance" makes it a misdemeanor to place on public or private property a symbol, object, appellation, characterization, or graffiti that arouses anger, alarm, or resentment in others on the basis of race, color, creed, religion, or gender." (The ordinance specifically mentions the "burning of a cross or Nazi swastika" as examples of such symbols or objects.)

St. Paul, Minnesota's "Bias-Motivated Crime Ordinance"

"... makes it a misdemeanor to place on public or private property a symbol, object, appellation, charactirazation, or graffiti that arouses anger, alarm, or resentment in others on the basis of race, color, creed, religion, or gender."

Please read the following:

- R.A.V. v. City of St. Paul
- Supreme Court
- Hate Speech and the First Amendment

Critical Thinking

Consider how "hate speech" differs from "hate crime." How might it differ in intent? How might it differ in its effect?

Discuss the provisions of the St. Paul Bias Motivated Crime Ordinance. What was its intention? Why was it declared unconstitutional? Should it have been?

To participate in the discussion, select OUTLINE from the TOOLS menu. Once you are back at the OUTLINE, select the appropriate FORUM from this lecture.

Models of Hate Crime as "Bias" Conduct

Differential Selection of a Victim Based on...

- Symbolic
- Actuarial
- Discriminatory Model
- Racial Animus
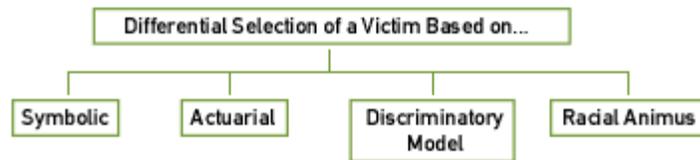
Bias is a crucial consideration in defining hate crime. To further articulate the parameters of the hate crime canon requires that hate crime be demarcated from what Lawrence (1999) has referred to as "parallel crimes," defined as "similar crimes that lack bias motivation" (Lawrence 1999:4). Crimes such as homicide, assault, trespass, and vandalism, for example, may or may not contain a bias motivation; thus they may or may not constitute a hate crime.

So, hate crimes are not always separate offenses, but acknowledge a specific motivation for a criminal event. A primary distinction between a hate crime and a parallel crime - the so-called "intent standard" - is a core dimension of the hate crime canon insofar as this element distinguishes "hate crime" from other forms of malicious and criminal activity.

As King (2001:3-4) argues in one of the few studies on the prosecution of hate crime, "The *mens rea* has been considered requisite for criminal prosecution since the conception of common law, yet only recently has the specific prejudice associated with a crime become criminal or led to penalty enhancements." Accordingly, all of the state and federal laws presented earlier in this lesson imply an intent standard. Law enforcement officials routinely define hate crimes as separate from other crimes precisely because the offender's conduct was motivated by "bias" or "prejudice."

READING

Please read the following:
*Conduct motivated by hate*

To emphasize the centrality and consequence of the bias intent standard in hate crime, social and legal analysts have made useful analytic distinctions between various ways in which the victim's membership in a social category can play a role in the perpetration of (some) crimes. Most notably, distinctions between symbolic and actuarial crimes, as well as racial animus models and discriminatory selection models of target choice, demarcate the primary ways in which the intent standard has - and has not - been envisioned in the hate crime canon.

Models of Hate Crime as "Bias" Conduct

Differential Selection of a Victim Based on...

Symbolic	Actuarial	Discriminatory Model	Racial Animus
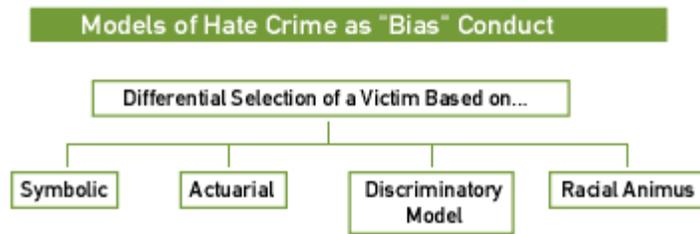
Symbolic crimes are best envisioned as social crimes because victims are selected precisely because of what they symbolize. The crime is committed for expressive reasons.

Perhaps the most vivid historical example of this in the United States is the history of lynching blacks, where the corpse was displayed in communities to send a message to other blacks and sympathetic whites. More recently, in Laramie, Wyoming, a young gay man named Matthew Shepard was robbed, pistol-whipped, tied to a fence, and left to die by two young men who were offended by his homosexuality. In each of these cases, the individual was victimized in order to convey a message about social types (blacks and homosexuals) to the larger community.
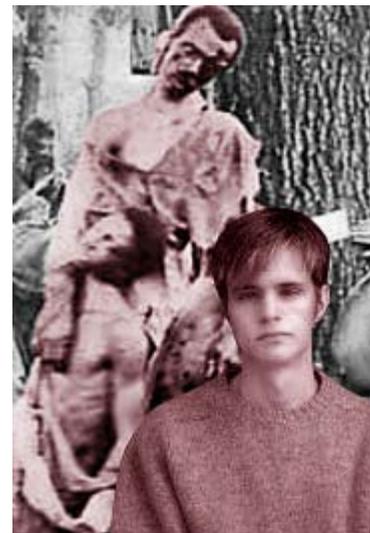
In contrast, actuarial crimes involve the selection of victims based on real or imagined social characteristics for instrumental reasons rather than for expressive reasons. As Berk, Boyd, and Hamner (1992:128) explain, "People routinely make lay estimates of central tendencies associated with particular social categories."

These assessments play into all sorts of choices criminals make prior to engaging in criminal conduct. A group of perpetrators may purposely assault and rob a Jewish person not because of what Jewishness represents to them, but because they apply a stereotype that is anchored in the notion that Jews have more money than gentiles, thus they are more likely to "pay off" than "random" victims of assault and robbery. Similarly, a group of perpetrators may purposely assault and rob a person in a wheelchair not because of their antipathy toward persons with disabilities, but because they apply a stereotype that is anchored in the notion that persons with disabilities are less inclined to resist, unable to seek assistance, unlikely to evoke the attention of authorities, or unable to testify about victimization.

In each of these examples, the victim's symbolic status is used to retrieve relevant "factual" information about him or her as a likely crime victim, not as a member of a social category held in ill-repute. In other words, it is not bigotry that motivates the crime. Rather, it is this (real or imagined) factual information, mediated through some imagined actuarial table, that addresses the vulnerability or profitability of a target.

Notice: In both symbolic and actuarial crimes, victims are selected because of some real or imagined social characteristic and group membership. In both symbolic and actuarial crimes, an element of discrimination based on a social characteristic is evident. Notably, however, the motivation for symbolic and actuarial crimes is different.

In symbolic crimes, selection is based on a desire to communicate a message, one born of bigotry. In contrast, actuarial crimes involve the use of social categories as a basis for victim selection as a means to some nonsymbolic end. "This distinction between symbolic and actuarial crimes suggests a potentially useful boundary between hate-motivated crimes and other offenses" even though, in many cases, making clear empirical distinctions can be difficult.

Nonetheless, Berk, Boyd, and Hamner concluded that "perhaps the essential feature of hate-motivated crimes is their symbolic content. Crimes motivated solely by the victim's actuarial status would seem best included in another category" (Berk, Boyd, and Hamner 1992:131).

Critical Thinking

Keeping in mind the fact that the motivation for victim selection is what distinguishes a symbolic from an actuarial crime, consider how the same victim might be the object of either type of crime.

Consider the following description of a "parallel crime":

THE MAN WAS BEATEN BY TWO YOUTHS.

1. Add words to the statement above to make it apparent that the incident was an actuarial crime.
2. Add words to the sentence to demonstrate that it was a symbolic crime.

Notice how the same individual might be the victim of a parallel crime, an actuarial crime or a symbolic crime? Discuss your findings briefly.

To participate in the discussion, select OUTLINE from the TOOLS menu. Once you are back at the OUTLINE, select the appropriate FORUM from this lecture.

Related to the distinction between symbolic and actuarial crimes, a distinction can be made between "two analytically distinct, but somewhat overlapping [statutory] models of bias crimes" (Lawrence 1992:29-30): the discriminatory selection model and the racial animus model. Both of these models assume the presence of discrimination in the selection of crime victims. However, each model posits different criteria for assessing what does and does not constitute bias- or hate-motivated crime proper.

In the next topic, we'll begin with the discriminatory selection model.

The discriminatory selection model defines hate crime solely on the basis of the perpetrator's discriminatory selection of a victim, regardless of why such a selection was made. For example, like girls and women, people with disabilities may be targeted simply because they are perceived to be more vulnerable victims. Consistent with the development of sexual harassment law, the reasons or motivations for the discrimination - in this case differential selection - are irrelevant to the applicability of the law.

For example, consider the finding of the Court in a complex Florida case, *Dobbins v. State.* This case involved a Jewish youth who joined a skinhead group to anger his parents. When the other members of the group discovered he was Jewish, they beat him.

The Court of Appeals of Florida found the following in regard to its hate crime law: "[I]t does not matter why a woman is treated differently than a man, a black differently than a white, a Catholic differently than a Jew; it matters only that they are. So also with section 775.085 (Florida's hate crime statute). It doesn't matter that Dobbins hated Jewish people or why he hated them; it only mattered that he discriminated against Daly by beating him because he was Jewish." (Dobbins v. State, 605 So. 2nd (Fla. Ct. App. 1992).

Please read the following:

Dobbins v State
Florida's hate crime statute

In this view, victim selection based upon vulnerability would be punished in the same way as a situation in which a victim was selected to express hatred. In other words, the discriminatory selection model does not distinguish between symbolic and actuarial crimes. It is inclusive of both kinds.

This legal model/thinking captures the most popular form of hate crime law in the United States. As of 2000, roughly two-thirds of the state laws and the existing and proposed federal laws are based upon it (Jenness and Grattet 2001). Moreover, this form of the law has passed constitutional muster in the United States. It was legitimated in 1993 in _Wisconsin v. Mitchell_ (Wisconsin v Mitchell, 508 U.S. 476 [1993]), the first case in which the U.S. Supreme Court expressly sustained the constitutionality of a modern bias crime law in light of charges of unconstitutionality.

Please read the following:
For a detailed review of the many constitutionality debates and resolves, see Lawrence 1999, Phillips and Grattet 2000).

In sharp contrast, the racial animus model focuses attention on the reason and subjective states associated with the discriminatory selection of victims. This approach assumes that the motivation for the selection of a victim is less instrumental and more expressive. Perpetrators use the act of victimization to express "animus," "maliciousness," "hatred," and so on, toward the category of persons the victim is presumed to represent (a person of color, a homosexual, a Jew, a person with a disability, and so on). Here, evidence of bigotry is central to the making the case that a "hate crime" has occurred.

Perhaps the most vivid example of a case that clearly fits the racial animus model in recent U.S. history was the murder of James Byrd in Jasper, Texas, in June 1998. This event, covered extensively in the national media, presented the murder as a "hate crime" after it was revealed that Byrd, a 49-year-old black man, had been beaten and then dragged to his death behind a truck by three white men known to be affiliated with a white supremacist group.

During the investigation of the crime, the defendants were discovered to harbor beliefs about blacks that were clearly racist. During the trial, prosecutors used this information as evidence of racist motivations for the crime, which the defendants declined to refute before, during, or after the trial. Indeed, after being sentenced to life in prison, one defendant publicly expressed his continued hatred of blacks.

The racial animus model follows the distinction between actuarial and symbolic crimes by defining the former as beyond the domain of the law, and the latter as within the desirable domain of hate crime law. As Lawrence (1999:34) explains, "This model is consonant with the classical understanding of prejudice as involving more than differential treatment on the basis of the victim's race. This understanding of prejudice, as reflected in the racial animus model of bias crimes, requires that the offender have committed the crime with some measure of hostility toward the victim's racial group and/or toward the victim because he is part of that group."

The promotion of this model by Lawrence is in line with the promotion of the "symbolic crimes" above "actuarial crimes" model by Berk, Boyd, and Hamner (1992). Despite the fact that only a minority of states have adopted this approach to demarcating the bounds of hate crime, it is noteworthy that this model of bias crime - the racial animus model/the symbolic crime model - is evident in the regulations promulgated by the Federal Bureau of Investigation to implement the Hate Crimes Statistics Act (Pub. Law § 101-275).

These regulations define bias crime conduct motivated, in whole or in part, by a "preformed negative opinion or attitude toward a group of persons based on their race, religion, ethnicity/national origin, or sexual orientation" (Model Penal Code §§ 2.06, 5.02 [1985]). Obviously, "opinion" and "attitude" become central in law enforcement's formulation of hate crime as a specific type of criminal conduct that necessarily contains parallel crimes.

Please read the following:
Hate Crimes Statistics Act (Pub. Law § 101-275).

By definition, all cases falling under the rubric of the racial animus model are also cases that fall under the rubric of the discriminatory selection model, but not vice-versa. Thus the racial animus model implies a more stringent approach to demarcating hate crimes from parallel crimes than does the discriminatory selection model. From Lawrence's point of view, as a legal and political strategy, the discriminatory selection errs on the side of over inclusion.

He argues that a focus on the racial animus model is preferable precisely because it directs state sanctioned social control (that is, the law and law enforcement) toward bigotry and the harm it generates. With regard to the latter, Lawrence argues "bias crimes ought to receive punishment that is more severe than that imposed on parallel crimes" because "they cause greater harm than parallel crimes to the immediate victim of the crime, the target community of the crime, and the general society" (Lawrence 1999:34&44).

READING

Read the following article:
Thought Crime

In light of Lawrence's comments on the preceding screen, as well as the opinions voiced by Janet Reno and the anonymous author of "Thought Crime," do you think that bias-motivated crimes should be punished more severely than parallel crimes? Why? Why not?

To participate in the discussion, select OUTLINE from the TOOLS menu. Once you are back at the OUTLINE, select the appropriate FORUM from this lecture.

- Read the description of an event that occurred at a Catholic Church in Brooklyn, New York.
- For the purpose of this exercise, assume the role of a member of the community affected by the "bias-crime" described in the *Newsday* article. You might elect to be a local police officer, a parishioner, a local legislator, a gay-rights activist - anyone in the community.
- In the FORUM, hold a town hall meeting at which various members of the affected community discuss the merits of sentence enhancement for the soon to be apprehended perpetrator(s). (You might find it interesting to assume a role which requires you to express a point of view unlike your own.)

To participate in the discussion, select OUTLINE from the TOOLS menu. Once you are back at the OUTLINE, select the appropriate FORUM from this lecture.

Finally, all conceptualizations of hate crime invoke decisions about status provisions: who counts, and who doesn't, or what Soul and Earl (1999) refer to as "target groups," identified in hate crime law. Just as the intent standard distinguishes hate crime from parallel crimes, so too do status provisions. Status provisions single out some axes of oppression as part and parcel of the hate crime problem in the United States, while rendering other axes around which violence is organized invisible.

One the of most important elements of the substantive character of hate crime law - the adoption of select status provisions, such as race, religion, ethnicity, sexual orientation, gender, and disabilities - ensured that some victims of discriminatory violence have been recognized as hate crime victims while others have gone unnoticed. In particular, people of color, Jews, gays and lesbians, women, and those with disabilities increasingly have been recognized as victims of hate crime, while union members, octogenarians, the elderly, children, and police officers, for example, have not. In short, some groups that are differentially vulnerable to crime have been deemed victims worthy of legal redress, while some have not.

With regard to the past, the figure on this screen reports the cumulative frequency of status provisions in state hate crime law in the United States. In 1988, the most common status provisions were for race, religion, color, and national origin. This set of status provisions constitute the more popularly known and accepted elements of the hate crime cannon are associated with the most visible, recognizable, and stereotypical kinds of discriminatory behavior in U.S. history and in the current era.

For example, the stereotypical U.S. hate crime involves violence toward or harassment of blacks, immigrants, and Jews. While other provisions - such as gender, ancestry, sexual orientation, creed, age, political affiliation, and marital status - are recognized in the early development of hate crime discourse and attendant law, they appear infrequently.

For specific provisions in a given state, see this map.

Consistent with other analyses (Jenness 1999; Levin and McDevitt 1993), these provisions were not part of legislators' original conception of the "normal" axes along which hate crimes occur. By 1998, however, a second tier of categories clearly emerged, with sexual orientation, gender, and disability becoming increasingly recognized in state hate crime law. This pattern is replicated in federal hate crime law (Jenness 1999). These status markers are less stereotypical than their predecessors, especially early on in the development of hate crime law and discourse. Nonetheless, they have become increasingly recognized as axes along which hate-motivated violence, and thus hate crime, occur.

The respective unfolding of these clusters of statuses - the core and the second tier - reflect the history of various post-1960s civil rights movements in the United States (Goldberg 1991; Jenness and Broad 1997). Race, religion, color, and national origin reflect the early legal contestation of minorities' status and rights. Thus there is a more developed history of invoking and then deploying the law, especially civil rights law, to protect and enhance the status of blacks, Jews, and immigrants

In contrast, the gay/lesbian movement (Adam 1987; Vaid 1995), the women's movement (Ferree and Hess 1985), and the disability movement (Scotch 1984; Shapiro 1993) reflect a "second wave" of civil rights activism and "identity politics" (Goldberg 1991) in the United States. Accordingly, sexual orientation, gender, and disability have only recently been recognized in hate crime law in the U.S.

As Jenness (1999) has shown in her work on the U.S. Congressional hearings on hate crime, these are also more heavily contested protected statuses than the "first wave" categories. Not surprisingly, they remain less embedded in hate crime law. Finally, marital status, creed, age, armed service personnel, and political affiliation are not visibly connected to issues of discrimination and victimization by any particular mass movement. They are fairly anomalous provisions in hate crime law.

Please read the following:
Jenness (1999) on the U.S. Congressional hearings on hate crime.

Keeping in mind the assertion that status provisions are among the primary elements contributing to the substantive character of hate crime law, read and consider the findings reported in the three articles below:

- "Attitudes toward hate crime laws"
- "Assessing the Public's Demand for Hate Crime Penalties"
- "Stigma or Sympathy? Attributions of Fault to Hate Crime Victims and Offenders"

Discussion

What do the findings presented in these articles reveal about public opinion on hate crime. Are you suprised? Why? Why not?

To participate in the discussion, select OUTLINE from the TOOLS menu. Once you are back at the OUTLINE, select the appropriate FORUM from this lecture.

Moving well beyond these rare provisions, an array of newfound provisions is emerging.

Similarly, states have proposed legislation that would define one's position on the abortion debate as a basis for hate crime victimization.

California State Senator Deborah Ortiz (D-6th District), for example, sponsored a measure that would "increase penalties for crime committed against those exercising their freedom of reproductive choice to match penalties for committing crimes classified as hate crimes" (DeGiere 2001:5). The general pattern is that hate crime law has expanded to recognize an increasing number of axes along which violence is organized, and to cover a broader and broader array of potential victims of discriminatory violence.

Thinking about more commonly accepted forms of hate crime, is hate crime a form of "domestic terrorism"? The discovery of new and epidemic forms of hate-motivated violence, especially violence against gays and lesbians, people of color, religious minorities, and girls and women, has often incited discussions of intergroups "terrorism" that occurs in both the public and private sphere and is perpetrated by strangers and intimates alike.

Gibbs (1989) published a very elaborate conceptualization of terrorism, which includes violent acts or threats of violence that: (1) "are undertaken or ordered with a view to altering or maintaining at least one putative norm," and (2) serve a "normative goal by inculcating fear of violence in persons (perhaps an indefinite category of them) other than the immediate target of the actual or threatened violence" (Gibbs 1989:330).

Gibbs'Conceptualization of Terrorism

Violent acts or threats of violence that are undertaken or ordered with a view to altering or maintaining at least one putative norm and serve a normative goal by inculcating fear of violence in persons (perphaps an indefinite category of them) other than the immediate target of the actual or threatened violence (Gibbs 1989:330)

There is, however, no single, universally accepted, definition of terrorism. The U.S. Code and the FBI define terrorism as "the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives."

Domestic terrorism is the unlawful use, or threatened use, of force or violence by a group or individual based and operating entirely within the United States or Puerto Rico without foreign direction and whose acts are directed at elements of the U.S. government or its population, in the furtherance of political or social goals.

A terrorist incident is a violent act or an act dangerous to human life in violation of the criminal laws of the United States, or of any state, to intimidate or coerce a government, the civilian population, or any segment thereof.

For more information on the FBI's treatment of terrorism, click here.

Consider one example: the case of violence organized around gender.

The term "sexual terrorism" has been institutionalized over the last 30 years as feminist activists and scholars have studied and responded to the causes and consequences of violence against women. In a series of articles, Sheffield defines sexual terrorism as "a system by which males frighten and, by frightening, dominate and control females" (Sheffield 1987:171-189; 1989:3-19; 1992:392).

As she describes: "Sexual terrorism is manifested through actual and implied violence; and all females, irrespective of race, class, physical or mental abilities, and sexual orientation, are potential victims - at any age, at any time, or in any place. Sexual terrorism employs a variety of means: rape, battery, incestuous abuse, sexual abuse of children, sexual harassment, pornography, prostitution and sexual slavery, and murder" (Sheffield 1992:393).
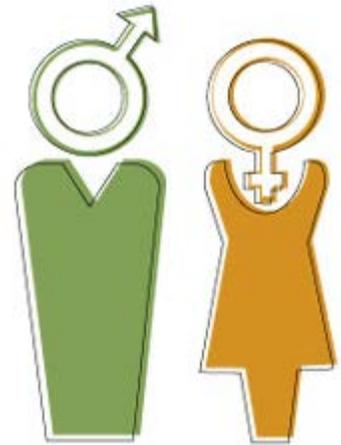
For Sheffield, whatever the specific mechanism employed, "violence and its corollary, fear, function to terrorize females and to maintain the patriarchal definition of woman's subordinate place" (Sheffield 1987:171).

As such, violence against women can be seen as an objective condition of females' existence and a linchpin to the power relations that sustain patriarchy. As Donat and D'Emilio (1996:191) recently noted in an article on "A Feminist Redefinition of Rape and Sexual Assault: Historical Foundation and Change," "within the feminist movement of the 1960s, rape was reconceptualized as a mechanism for maintaining male control and domination, a violent means of inducing fear in women and reinforcing their subordination to men."

Related to the observations above, "Lesbians sentenced for self-defense," recounts a 2007 incident of gender-motivated violence and events that occurred in its aftermath.

Are hate crimes acts of terrorism, albeit often done by and to citizens of the same country? Does the FBI's conceptualization of terrorism "fit" the case of hate crime? For more information about the FBI's treatment of terrorism, click here.

In light of the preceding discussion of "sexual terrorism," share your thoughts on whether other forms of bias-motivated violence "fit" the criteria for terrorism? If so, which ones? If not, why not?

To participate in the discussion, select OUTLINE from the TOOLS menu. Once you are back at the OUTLINE, select the appropriate FORUM from this lecture.

summary

- "Hate crime" (proper), falls at the intersection of violence (harmful behaviors that are a threat to physical safety or associated psychological damage), hate (ill will seeking a victim), and crime (any behavior that can, if detected, invoke a reaction from the state or sovereign).

- The three necessary and sufficient elements of hate crime are illegality, bias-motivation, and status provisions.

- In terms of illegality, four major federal laws define the parameters of hate crime in the United States: (1) the Hate Crimes Statistics Act (1990) enables the collection of statistical data on hate crime; (2) the Violence Against Women Act (1994) was ruled unconstitutional but created the first civil rights remedy aimed at crimes of violence motivated by gender; (3) the Hate Crimes Sentencing Enhancement Act (1994) identifies eight predicate crimes for which judges are allowed to enhance penalties; and (4) the Local Law Enforcement Hate Crimes Prevention Act (2005). What are the essential elements of this latter piece of legislation?

- States have yet to reach consensus on how best to use the law to address bias-motivated violence. Several types of state-level hate crime legislation are distributed throughout the United States.

- In terms of bias-motivation, a primary distinction between hate crime and parallel crime is the "intent standard," which distinguishes hate crime as having a specific prejudicial or bias intent associated with it.

- In symbolic crimes, victims are selected because of what they symbolize. A symbolic crime is committed for expressive reasons.

- In actuarial crimes, victims are selected based on real or imagined social characteristic(s) for instrumental reasons.

- The discriminatory selection model defines hate

crime solely on the basis of the perpetrator's discriminatory selection of a victim, regardless of the reason behind the selection.

- The racial animus model focuses attention on the reason for the discriminatory selection of a victim.
- In terms of status provisions, all conceptualizations of hate crime invoke decisions about "who counts and who doesn't."
- Race, religion, color and national origin constitute the core cluster of statuses recognized as axes along which hate-motivated violence occurs. Sexual orientation, gender and disability status represent the second tier of statuses and have become increasingly recognized as axes of hate motivated violence.
- Hate crime law has expanded to recognize an increasing number of axes along which violence is organized and to cover a broader and broader array of potential victims of discriminatory violence.
- Bias-motivated crime is increasingly discussed as a form of domestic terrorism.